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# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1964

No. 456

THE GRAND LODGE OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, et al.,
*Petitioners,*

vs.

JOHN J. KING, EARL N. ANDERSON, et al.,
*Respondents.*

## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

### STATEMENT OF THE CASE

**A. The Need to Restate.**

A reading of Petitioner's statement of the case would make it appear that the instant action involves no more than a simple termination in vacuo of certain union employees, whose employment tenure lies in

the unfettered discretion of the Union President and who happen incidentally to be members of the Union-employer. Petitioners, in addition to characterizing respondents' status in a manner not supported by the Record, pointedly omit any real indication of the integral relation existing between the exercise by respondents of rights guaranteed them by the Labor Management Reporting and Disclosure Act[1] (73 Stat. 519 [1959] 29 USCA Section 401-531 [1962]) and their termination. Totally obscured is the fact that the termination of respondent's positions as appointed officers was designed solely as retribution for the exercise of these guaranteed rights.

Petitioners' statement of the case finds its natural correlative and outgrowth in their statement of the question presented. Petitioners seek to mischaracterize the present action as an attempt to contort the "Bill of Rights" provisions of the LMRDA to govern a simple employment relationship and one "where membership rights in the organization are not disturbed."

As a result of petitioners treatment of the facts and the question, respondents feel compelled to briefly restate both.

**B. The Facts.**

Respondents were six Grand Lodge Representatives (hereafter GLRs) of petitioner International Association of Machinists (IAM). (R. 6-7.) GLRs are

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[1]The Act will hereinafter be referred to as LMRDA or by its popular name the "Landrum-Griffin Act".

appointive officers, whose duties vary, but include such functions are representing the IAM in expansion, organization, grievance representation, NLRB representation and negotiations with employers. (R. 7.) As GLRs, respondents received a salary of $12,000 per year together with certain insurance and pension benefits. (R. 7-8.) Each had spent long years working in the union movement including an average of 15 years in the position of GLR, preceded by not less than five years membership in the IAM. (R. 6-7.)

On November 19, 1960, individual petitioners as the executive council of the IAM, notified Roy M. Brown, a general vice president of the IAM, that the executive council would not support his candidacy in the next national union election, but would instead support another candidate. (R. 13.) Brown thereupon announced his intention to run for the office of secretary-treasurer of the IAM in opposition to the incumbent candidate endorsed by the executive counsel. (R. 13.) Brown held certain views as to union policies with which respondents concurred, as a result of which respondents, together with a number of other members of the IAM, determined to support his candidacy. (R. 12-13.) Thereafter respondents were among the most active supporters of Brown. (R. 14.)

The results of the 1961 IAM elections were certifi ' on June 15, 1961, in Washington, D.C., by official election tellers. (R. 14.) The results indicated that Brown had been defeated. (R. 15.) *On the same day as the certification of the election results,* petitioner A. J. Hayes, president of the IAM, wrote to each of the

respondents notifying him that his services as Grand Lodge Representative were terminated as of July 31, 1961. (R. 15.) In addition, petitioners caused spurious union charges to be filed against respondent Skagen, and, contrary to prior consistent practice, refused the application of respondent McGraw for disability retirement following the progressive worsening of a postoperative condition. (R. 18-27.)

After unsuccessful attempts by respondents to gain internal administrative review of their discharges, respondents filed this action seeking restoration to their positions and damages, *or* in the alternative, damages only. (R. 3-46.) Of the six counts of the complaint, the first three counts were based on violations of the LMRDA and the second three counts on state law under the pendent jurisdiction of the federal courts. Respondents' counts under the LMRDA demonstrated that petitioners had disciplined respondents contrary to LMRDA Section 609, 29 USC § 529, for exercising their equal rights and free speech rights granted by LMRDA Sections 101 (a) (1) and 101 (a) (2), 29 USC § 411 (a) (1) and § 411 (a) (2), and for exercising their rights to support the candidate of their choice, guaranteed by LMRDA Section 401 (e), 29 USC § 481 (e). In addition, respondents alleged that petitioners' discipline of respondents without a hearing was contrary to LMRDA Section 101 (a) (5), 29 USC § 411 (a) (5).

Respondents' complaint repeatedly alleged that petitioners' actions were taken to discipline members

who had supported Roy M. Brown in the election. (R. 14, 15, 18, 19, 23, 24, 27, 28, 29.) In affidavits filed in opposition to petitioners' motion and in support of respondents' motion each respondent stated that he had been discharged "solely because they sought to discipline me for freely expressing my views favorable to Roy M. Brown and other candidates of my choice." (R. 71, 74, 77, 81, 84, 87.) Petitioners have never contested these facts. In fact, at the hearing on the motions, petitioners' attorney on four occasions frankly admitted that the respondents were discharged as GLRs solely because of their exercise of their LMRDA granted right of free speech and free election activity. (R. 113-114, 120-121, 123, 147.)

Petitioners' assertion that respondents were appointed at the will of the IAM president, and that they continued in the employ of the union at his whim is directly contrary to the allegations of the complaint and the sworn statements of each respondent. The complaint alleges express and implied contractual rights concerning employment (R. 31); that appointments were made with the approval of the executive council. (R. 69.) In addition, each affidavit states:

> "Each year I received a small laminated card from the union *for the purpose of identification*. No one document set forth all the terms of the employment contract between myself and defendant International Association of Machinists. Rather, this contract results from the initial appointment, the provision of the IAM Constitu-

> tion, and the practices, customs and usages which exist, pertaining to the appointment of a Grand Lodge Representative and his tenure. An implied term of said contract was employment until retirement or official termination for cause in accordance with union constitutional practices." (R. 69, 72-73, 76, 79, 82, 83.) (Emphasis added.)

Petitioners' statements concerning the nature of respondents' employment amount simply to bald assertions supported neither by the record nor by fact.

Petitioners moved in the District Court for dismissal under Rule 12(b) of the Federal Rules of Civil Procedure for failure to state a cause of action and for lack of jurisdiction. (R. 46-47.) Petitioners sought in the alternative to secure summary judgment. (R. 46-47.) Respondents resisted petitioners' motion and, in turn, sought summary judgment on their own behalf. (R. 67-78.) The District Court denied both motions. (R. 99.)

The Court concluded that, at the least, a cause of action was stated under the procedural protections of LMRDA section 101 (a) (5), and in view of that did not consider the other sections relied upon. An interlocutory appeal was taken from the denial of Petitioners' motion. The Court of Appeals for the Ninth Circuit by a unanimous opinion concluded that although the procedural provisions of Section 101 (a) (5) did not apply in view of a legislative gloss placed upon that single section, a cause of action was clearly stated under Sections 609 and 102 for the actions of petitioners taken as retribution for the exercise of

rights guaranteed to respondents by Sections 101 (a) (1) and 101 (a) (2).[2]

It is from this decision that petitioners seek Certiorari.

### C. The Question Presented

Does petitioners' termination of respondents from their positions as Grand Lodge Representatives solely to discipline them for the exercise of their membership rights guaranteed by Sections 101 (a) (1) and 101 (a) (2) of the LMRDA constitute a violation of those sections and of the protective provisions of Section 609 of LMRDA?

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## ARGUMENT

### I. THE COURT OF APPEALS CORRECTLY DECIDED THAT RESPONDENTS' REMOVAL AS RETRIBUTION FOR THE EXERCISE OF MEMBERSHIP RIGHTS PROTECTED BY LMRDA IS A VIOLATION OF THAT ACT.

It is imperative at the outset that certain matters, already alluded to, be stressed. Respondents in no way seek to vindicate any "right to employment" as

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[2]Respondents based one of the LMRDA counts upon the combination of Section 401 (e) and Section 609. Neither the Court of Appeals nor the District Court passed upon this argument. Respondents feel that the "*right* to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind . . ." set out in 401 (e) falls within the protection of Section 609 from discipline of a member "for exercising any *right to which he is entitled under the provisions of this Act.*" (Emphasis added.) Respondents believe that unless the election itself is attacked, there is no conflict with the power of the Secretary of Labor. The legislative history supports this conclusion. In view of the fact that the court below did not rest its opinion on this Section, respondents will not discuss this further but simply refer the Court to their brief below, at pp. 23-6.

GLRs under the LMRDA, nor do respondents assert that the LMRDA governs the "employment relation." On the contrary, respondents are simply seeking vindication of rights held as *members* of the union; they seek to be protected from or compensated for discipline leveled against them because they exercised fundamental membership rights guaranteed by the LMRDA. The only connection that the employment relation has to the instant case is that this is the means petitioners have chosen as retribution for the exercise of those membership rights.

In supporting the candidacy of Roy Brown, respondents were exercising membership rights guaranteed them primarily by the so-called Bill of Rights provision of the LMRDA. These protective provisions include: An assurance of equal rights (Section 101 (a) (1), 29 USC, Section 411 (a) (1)[3]; freedom of speech and assembly (Section 101 (a) (2), 29 USC, Section 411 (a) (2)[4]; the right to vote or otherwise

[3]"LMRDA Sec. 101 (a) (1) 29 USCA 411 (a) (1) Equal Rights—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and by laws.".

[4]"LMRDA Sec. 101 (a) (2) 29 USCA 411 (a) (2) Freedom of Speech and Assembly. Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce

support a candidate without discipline or reprisal of any kind (Section 401 (e), 29 USC, Section 481 (e)).[5]

Solely as a result of the exercise of these membership rights, respondents were fired from their long-held positions with the union. By this action petitioners clearly violated these sections, and the protective and remedial provisions of Section 609 of the LMRDA, 29 USC, Section 529, which provides:

> "It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, *or otherwise discipline* any of its members for exercising any right to which he is entitled under the provisions of this Act. The provisions of section 102 shall be applicable in the enforcement of this section." (Emphasis added)[6]

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reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations."

[5]"LMRDA Sec. 401 (e) 29 USCA 481 (e). In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed), and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof."

[6]The violation of Sections 101 (a)(1) and 101 (a)(2) by themselves give rise to a cause of action under Section 102 which provides: "LMRDA Sec. 102, 29 USCA 412. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located."

When petitioners assert that the decision below was erroneous in that the Court construed the LMRDA as governing the "relation between an employee and his employing union" and the "right to hold an office or job with a union", it is patently clear that this assertion finds its genesis in petitioners' avoidance of the facts and mis-construction of the question presented. For nowhere did the Court below find any "right" to be a GLR set out in the statute or that the LMRDA governs the employer-employee relationship.

The Court determined that since respondents are members of the IAM, they possess certain fundamental rights which are guaranteed to "members" by Sections (101) (a) (1) and 101 (a) (2). The Court then concluded that when petitioners disciplined respondents for the exercise of their membership rights by removing them from their positions as GLRs, such discipline was a violation of the guaranteed rights and of the protective provisions of Section 609. The only connection that the Court of Appeals found between the LMRDA and the "employment-relationship" lies solely in the fact that this is the means used by petitioners to punish respondents for use of their LMRDA protected rights.

Petitioners apparently bristle at the statement by the Court of Appeals that petitioners are contending that the Bill of Rights protections do not apply to Officer-Members. But stripped of all its trappings this is exactly what petitioners contended below. For petitioners are even now asserting that respondents could not exercise these rights free from retribution

through loss of their livelihoods. To say this is to say that respondents did not really have these rights. Under these circumstances such "rights" become so vapid and evanescent as to be nonexistent. It would, in fact, appear, that when petitioners now piously admit that member-officers or member-employees enjoy the same membership rights, they are revealing the absurdity of the result for which they contend. For no rights exist when a knife rests at your economic jugular vein. And respondents' "equal" rights and right of free speech become reduced to a mockery.

And lest petitioners imply to this Court that they had short shrift below and were unfairly treated, it should be noted that the Court fully considered the contention, made again by defendant, that the inclusive language of Section 609—"otherwise discipline" —did not encompass petitioners' retributive actions. (Pet. p. 8a). The Court considered this strained argument and properly rejected it as totally inconsistent with the fundamental policy of the act and its legislative history.

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## II. THE PETITION DOES NOT RAISE ANY QUESTIONS OF SUBSTANTIAL IMPORTANCE.

Basically, petitioners assert that two important questions are presented. First, they claim that the holding of the Court of Appeals (as petitioner describes that holding) greatly extends the coverage of the LMRDA. Second, petitioners allege that the Court below reached this holding only by "novel" methods of statutory construction.

Petitioner's first contention is based on a confusing description of the holding of the Court below. Petitioners talk of application of the Bill of Rights to "employees who also *happen* to be members of the union" and to the termination of their employment "even though such action does not affect their *membership.*" (Pet. p. 12, emphasis added.) The Court of Appeals, however, held that when petitioners dismissed respondents from their positions for the exercise of LMRDA protected *membership rights,* which petitioners admit respondents as members shared, such discipline was a violation of the LMRDA.

Equally unavailing is petitioners' second contention that an important question is presented by the "novel" methods of statutory construction applied by the Court below. It is hardly "novel" or objectionable to construe the language of a statute—especially one such as the present reflecting board social policy—so as to effectuate its legislative purpose, and to construe its language in light of that purpose as revealed by the legislative history.

Petitioners complain that the opinion below has "split Section 1 asunder" without in any manner explaining how a limitation in the fair procedure section (LMRDA Section 101 (a) (5)) limits respondents' equal rights and free speech rights under 101 (a) (1) and 101 (a) (2).

Petitioners' assertion that the Court of Appeals' interpretation of Section 609 is inconsistent with its view of 101 (a) (5) reflects the unwillingness of petitioners to have the Court examine the legislative his-

tory and construe the statute in light of the clear legislative purpose.

The LMRDA and, in particular, the Bill of Rights provisions, is a response to the disturbing abuses revealed by the so-called McClellan Committee, and has as an avowed purpose the protection of union democracy and the free exercise by union members of fundamental rights without fear of reprisal. (See H.R. Rep. No. 741, 86th Cong., 1st Sess. 2 [1959]; Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, Vol. I, p. 760. See also remarks of Senator McClellan at Appendix B of Appellants' Br.)

In order to quiet fears that the right of fair procedure set out in 101 (a) (5) would impede the summary suspension of officers guilty of violations of other provisions of the LMRDA, such as dissipation or misappropriation of funds, a legislative "gloss" was placed on this one section in order to make clear that this section should not be construed to prevent the taking of such action summarily. But nowhere is there any indication of any intention to limit the purpose of guaranteeing fundamental rights protected from reprisal and to cut down the broad protective cloak thrown around the enumerated rights by Section 609.

Judge Browning incisively elucidated this when he stated:

> "There is nothing in the legislative history to indicate that Congress wished to preserve an unrestricted power in the union to discipline

> officer-members (the subject matter of section 609, when discipline is imposed because of the exercise of rights under the Act), as distinguished from the power to discipline summarily (the subject matter of section 101 (a) (5)). Thus, to construe section 609 to exclude from its coverage dismissal from union office would immunize a most effective weapon of reprisal against officer-members for exercising political rights guaranteed by the Act without serving any apparent legislative purpose; and, as we have noted, the members thus exposed to reprisal would be those whose uninhibited exercise of freedom of speech and assembly is most important to effective democracy in union government." (Petitioner's brief p. 10a.)

It is true that equal rights and the right of free speech set out in LMRDA 101 (a) (1) and 101 (a) (2) are important rights and the safeguarding of these rights is of concern to this Court. But the Court of Appeals has properly acted to protect these rights, and, in view of this, no important question remains for this Court's attention.

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### III. THE DECISION OF THE COURT OF APPEALS DOES NOT CONFLICT WITH THE DECISIONS OF OTHER CIRCUITS OR OTHER FEDERAL COURTS.

In contending that the decision of the Court of Appeals conflicts with other "circuits," petitioners mention only the case of *Sheridan v. United Brotherhood of Carpenters,* 306 F2d 152 (3d Cir. 1962), which petitioners assert constitutes the opinion of the Third Circuit.

It is clear that there is *no* "opinion" of the Third Circuit, in the *Sheridan* case as it relates to this action. Judge Kalodner's opinion was joined by neither of his fellow judges. Judge Hastie concurred *only* in the result and not in Judge Kalodner's reasoning. Judge Hastie opened his opinion by stating:

> "I vote to reverse the judgment below, but for a reason different from those stated by Judge Kalodner." (306 F2d at p. 159.)

Judge Hastie's opinion is based solely on a failure to exhaust remedies within the union. Petitioners, unwilling to accept Judge Hastie at his word, have attempted unrealistically to ascribe Judge Kalodner's views to him.

Judge McLaughlin dissented and wrote a perceptive opinion analyzing the purpose of the LMRDA and demonstrating the correctness of District Judge Steele's opinion in the Court below.

It is thus apparent that Judge Kalodner's opinion remains just that—Judge Kalodner's opinion. Additionally, it should be noted that his opinion has been soundly criticized in a recent law review commentary for its strained construction. This Note tellingly observed:

> "Since loss of union office can be as effective a sanction as a fine, suspension, or expulsion, to deny a union member-officer protection which is afforded other members would appear to subvert the basic purpose of Title I to benefit all union members." (Note, 11 UCLA L. Rev. [May 1964] 632 at p. 636.)

It would, in fact, appear that the decision of the Court below is supported by the only other relevant Circuit decision. In *Salzhandler v. Caputo,* 316 F.2d 445 (2d Cir. 1963) *cert. den.* 375 US 946 (1963), the Second Circuit construed the same provisions here involved to include within their protective scope the paid financial secretary of a local union. There the union in addition to other punishment, removed the member-officer from his position for circulating a pamphlet critical of the local president. The Second Circuit reversed the dismissal of the action by the trial Court and directed the entry of judgment as prayed, which included reinstatement to the position of financial secretary.

Failing to show a conflict between the circuit courts as required by Rule 19 of the Supreme Court Rules, petitioners assert the decision of the Court below conflicts with certain District Court opinions.

The District Court cases cited by petitioners, however, are entirely consistent with the decision below. None of these cases deal with removal as discipline for LMRDA protected membership rights. The quotations supplied by petitioners out of context simply indicate what respondents do not deny, that when there is a dismissal from office and/or employment unrelated to LMRDA protected membership rights, the LMRDA does not apply.

## IV. THE DECISION OF THE COURT OF APPEALS DOES NOT PRODUCE UNREASONABLE OR DISCRIMINATORY RESULTS.

Petitioners' argument that the opinion of the Court below produces unreasonable and discriminatory results is for the most part another throwback to petitioners' unwillingness to deal with the facts of the case and the real contentions of respondents and holding of the Court below. The only reason the LMRDA is applicable to the present case is because petitioners' action was taken as discipline for the exercise of LMRDA protected rights. There is no governing of the employment relation or "job protection" as such.

Petitioners say apparently that it is unreasonable that all classifications of employees can gain the Bill of Rights protections "simply by joining the labor organization." But GLRs together with other appointed and elected officers of the union, are *required* by the union constitution to be members of the union, and in the case of GLRs they must be members for at least five (5) years. (Art. VI, § 8 p. 20.). Further, the only rights, with which we are concerned, that flow from the LMRDA are equal political rights within the union and the right of free speech. The only rights that a clerical or janitorial employee would gain by joining the union is the right to fully participate in union democracy without fear of reprisal or retribution by the IAM.

It would, in fact, seem that petitioners now clearly contend that which they subsequently deny: that a union member who happens to be an officer or em-

ployee of the union does *not* enjoy the protection of the LMRDA Bill of Rights. This would produce the utmost in discrimination, and would be entirely contrary to the grant of "*equal* rights and privileges" and the grant of rights to "*every* member."

The specter of "disruptive" political activity is equally beside the point. Petitioners have never contended that respondents did not ably and efficiently carry out the duties of their offices and their obligations to the union. Had that been the case, the LMRDA would not have limited the union's right to remove them from their positions.

Petitioners appear dissatisfied with the suggestion of the Court below that if the union feels that political activity, as such, would impede the administration of the union, it might neutralize all employees of the union by regulations analogous to the Hatch Act.

But obviously this is not what petitioners desire. They want the power to be able to reward their partisans and throttle their opposition. The "disruptiveness" they object to is not the disruptiveness of union administration, but the disruptiveness of the power of entrenched leadership. The wish is to be able to maintain a phalanx of political aides in order to protect their positions of power within the union. This flies in the face of the LMRDA.

## CONCLUSION

For the foregoing reasons, the petition for Writ of Certiorari should be denied.

Dated, San Francisco, California,
September 28, 1964.

Respectfully submitted,
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